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In re Application of FLORACK et al :
U.S. Application No.: 10/574,888 :
PCT Application No.: PCT/NL2004/000708 :
Int. Filing Date: 08 October 2004 :
Priority Date Claimed: 09 October 2003 : DECISION
Attorney Docket No.: 294-248 PCT/US :
For: CHIMERIC CARRIER MOLECULES FOR :
THE PRODUCTION OF MUCOSAL :
VACCINES :
:

This is in response to applicant's "Petition to Revive" filed 17 March 2008.

BACKGROUND

On 08 October 2004, applicant filed international application PCT/NL2004/000708, which claimed priority of an earlier European Patent Office application filed 09 October 2003. A copy of the international application was communicated to the USPTO from the International Bureau on 14 April 2005. The thirty-month period for paying the basic national fee in the United States expired on 09 April 2006.

On 07 April 2006, applicant filed national stage papers in the United States Designated/Elected Office (DO/EO/US). The submission was accompanied by, *inter alia*, the basic national fee required by 35 U.S.C. 371(c)(1).

On 05 January 2007, the DO/EO/US mailed a Notification of Missing Requirements Under 35 U.S.C. 371 (Form PCT/DO/EO/905), which indicated that, *inter alia*, a sequence listing must be filed.

On 08 February 2007, applicant filed a sequence listing in both paper and computer readable form.

On 02 October 2007, the DO/EO/US mailed a Notification of Defective Response (Form PCT/DO/EO/916), which indicated that the sequence listing in computer readable form contained certain errors.

On 01 November 2007, applicant filed a substitute sequence listing in computer readable form.

On 21 February 2008, the DO/EO/US mailed a Notification of Abandonment (Form PCT/DO/EO/909), which indicated that the substitute sequence listing in computer readable form contained certain errors.

On 17 March 2008, applicant filed the present petition under 37 CFR 1.137(b).

DISCUSSION

Under 37 CFR 1.137(b), a petition requesting that an application be revived on the grounds of unintentional abandonment must be accompanied by: (1) the required reply unless previously filed, (2) the petition fee as set forth in 37 CFR 1.17(m), (3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition was unintentional, and (4) a terminal disclaimer if the application was filed before 08 June 1995.

With regard to item (1), applicant has provided the required reply under 35 U.S.C. 371.

With regard to item (2), applicant has provided the required petition fee.

With regard to item (3), the petition states, "The entire delay in filing the correct response to the Notice of Defective Response from the due date until the filing of a grantable petition under 37 CFR 1.37(b) was unintentional." This statement is interpreted as a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition under 37 CFR 1.137(b) was unintentional. If this is an incorrect interpretation in view of the rules, petitioner is required to provide a statement to that effect.

With regard to item (4), because the international application was filed after 08 June 1995, no terminal disclaimer is required.

CONCLUSION

For the reasons above, the petition under 37 CFR 1.137(b) is GRANTED.

The application has an International Filing Date under 35 U.S.C. 363 of 08 October 2004, and a date under 35 U.S.C. 371(c)(1), (c)(2), and (c)(4) of 08 February 2007.

This application is being forwarded to the United States Designated/Elected Office (DO/EO/US) for further processing in accordance with this decision.

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